benefits against state payments. Thus, the statute encourages States concerned about overcompensation of disabled workers to cut back on their own programs. But the "rational basis" discerned by the majority requires the statute to have precisely the opposite purpose.

I would affirm the judgment of the District Court.

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN joins, dissenting.

In my view, the offset provision of § 224 of the Social Security Act, 42 U. S. C. § 424a, 79 Stat. 406, creates an unlawful discrimination under the Due Process Clause of the Fifth Amendment.

Before this 53-year-old appellee became disabled in March 1968, he was supporting his wife and two children on total yearly earnings of approximately $6,600. Once disabled, he could not work, but he and his family were awarded federal social security disability benefits totaling $329.70 per month.[1] Because his employer had chosen to set up a workmen's compensation fund, appellee also became entitled to workmen's compensation benefits totaling $203.60 per month. These were his only forms of disability compensation. Had appellee been allowed to keep his initial award of federal benefits, his income would have totaled nearly $6,400 a year, somewhat less than he had earned before his disability. But because of the offset provision of § 224, appellee's monthly federal payments were reduced, solely because the supplement to his federal benefits was in the form

[1] The test for disability under the federal statute is a stern one. With an exception for elderly blind people, disability means "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months . . . ." 42 U. S. C. § 423 (d)(1)(A).

of state workmen's compensation. As a result, appellee's total yearly income was reduced to $5,146.80.

Appellee complains that the offset provision is unconstitutional because it places its severe burden on a single class of disabled persons without adequate justification. Under the challenged offset provision, federal social security disability benefits are reduced only for those persons whose disability entitles them to workmen's compensation. Other persons who receive other kinds of disability compensation—for example, private insurance benefits or tort damages—are allowed the full amount of federal social security benefits. The question here is whether workmen's compensation beneficiaries may be singled out in this way for a reduction in federal benefits.

Starting from the assumptions that federal social security insurance, like welfare assistance, is a "public benefit" in which the beneficiaries have neither contract nor property interests, and that statutory classifications affecting the basic needs of individuals are viewed no differently under the Constitution from classifications in the area of business regulation, the Court concludes that the classification here has a reasonable basis and is consistent with the Fifth Amendment. To reach today's result, the Court revitalizes *Flemming* v. *Nestor*, 363 U. S. 603 (1960),[2] and extends the doctrine of *Dandridge* v. *Williams*, 397 U. S. 471 (1970), to statutory classifications under *federal* law.[3] Thus, the Court to-

[2] *Flemming* was a 5–4 decision upholding a federal statute that terminated the old-age benefits of the family of a fully eligible worker, because he was deported as a former member of the Communist Party. The case has not met with unanimous critical acclaim. See Reich, The New Property, 73 Yale L. J. 733, 768–771, 775 (1964). Prematurely, it would appear, some scholars had predicted its demise. *E. g.*, The Supreme Court, 1969 Term, 84 Harv. L. Rev. 1, 103–104 (1970).

[3] In *Dandridge*, the Court held that a State's maximum grant regulation for welfare recipients did not unconstitutionally dis-

day holds that Congress can take social security benefits from a disabled worker as long as it does not behave in an "arbitrary" way; classifications in the federal social security law are consistent with the Fifth Amendment if they are "rationally based and free from invidious discrimination."

In opposing this course, I adhere to my dissenting views in *Dandridge* v. *Williams*. I continue to believe that the "rational basis" test used by this Court in reviewing business regulation has no place when the Court reviews legislation providing fundamental services or distributing government funds to provide for basic human needs. In deciding whether a given classification is consistent with the requirements of the Fifth or Fourteenth Amendment,[4] we should look to "the character of the classification in question, the relative importance to individuals in the class discriminated against of the governmental benefits that they do not receive, and the asserted state [or federal] interests in support of the classification." *Dandridge* v. *Williams, supra,* at 521 (MARSHALL, J., dissenting); cf. *Williams* v. *Rhodes,* 393 U. S. 23, 30 (1968). Under this approach, it is necessary to consider more than the character of the classification and the governmental interests in support of the classification. Judges should not ignore what everyone knows, namely that legislation regulating business cannot be equated with legislation dealing with destitue, disabled, or elderly individuals. Thus, in assessing the lawfulness of the special disadvantages suffered here by workmen's

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criminate between children in large and small families. The regulation was challenged under the Equal Protection Clause of the Fourteenth Amendment.

[4] I would use essentially the same approach when statutory classifications are challenged under either Amendment. Cf. *Bolling* v. *Sharpe,* 347 U. S. 497 (1954).

compensation beneficiaries, the Court should consider the individual interests at stake. Federal disability payments, even when supplemented by other forms of disability compensation, provide families of disabled persons with the basic means for getting by. I would require far more than a mere "rational basis" to justify a discrimination that deprives disabled persons of such support in their time of need.

It is unnecessary to elaborate further the analysis required by the principles of my *Dandridge* dissent. For even under the Court's "rational basis" test, the discriminatory offset provision here cannot be sustained. There simply is no reasonable basis for singling out recipients of workmen's compensation for a reduction of federal benefits, while those who receive other kinds of disability compensation are not similarly treated.

This is not to say that an offset scheme is intrinsically impermissible. Arguably, Congress has an interest in paying greater benefits to people who are relying completely on the federal social security program, and lesser benefits to people who have other sources of disability compensation. But the question here is not whether Congress has the power to prevent "duplicative" payments that might exceed previous take-home pay and might thereby discourage disabled workers from returning to work.[5] The issue is whether Congress may single

[5] The offset idea has had a rocky history. As the majority notes, a prior offset provision was repealed in 1958 because Congress believed that "the danger that duplication of disability benefits might produce undesirable results [was] not of sufficient importance to justify reduction of the social security disability benefits." H. R. Rep. No. 2288, 85th Cong., 2d Sess., 13. The present offset provision was restored to the Act in 1965. It was estimated at the time that no more than 2% of the federal social security disability beneficiaries also received workmen's compensation. Hearings on

out for the purpose of applying the offset only those who are receiving workmen's compensation, and exclude those who are receiving similar supplemental disability compensation from other sources. A concern about excessive combined benefits and "rehabilitation" does not explain that distinction.

What, then, is the "rational basis" for the disfavored treatment of persons receiving workmen's compensation? The majority, in its conclusory treatment of this question, appears to say that workmen's compensation "satisf[ies] a need" which is special; and, claiming to rely on "the reasoning of Congress as reflected in the legislative history," the majority finds that Congress "anticipated that a perpetuation of the duplication in benefits might lead to the erosion of the workmen's compensation programs." I cannot accept that argument as a justification for this statute. There is nothing in the Senate, House, or Conference Reports indicating that this was the basis for the legislation actually passed.[6] And I do not think that the argument is in fact rational. The statutory discrimination exceeds the maximum amount of irrationality and arbitrariness countenanced by the Fifth Amendment.

Workmen's compensation programs serve precisely the same function as other forms of disability insurance and

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H. R. 6675 before the Senate Committee on Finance, 89th Cong., 1st Sess., pt. 1, p. 152.

It is perhaps plausible to reason that duplicative benefits might in some circumstances discourage rehabilitation and a return to work. It is worth noting, however, that even without the offset provision, appellee's combined benefits would not have exceeded his earnings before disability. See *supra*, at 88.

[6] The sole concern expressed in these documents is that Congress should prevent "excessive combined benefits." S. Rep. No. 404, 89th Cong., 1st Sess., pt. 1, p. 100; see also H. R. Conf. Rep. No. 682, 89th Cong., 1st Sess.; H. R. Rep. No. 213, 89th Cong., 1st Sess.

tort damage suits. The payments assist workers in the same way, and satisfy the same need. Indeed, in appellee's home State of West Virginia, as in most States, workmen's compensation is by statute the complete functional equivalent of tort liability, since employers who participate in workmen's compensation cannot be sued for tort damages by disabled employees. W. Va. Code Ann. § 23–2–6. Moreover, no distinction can be drawn on the basis of the source of the payments. In West Virginia, as in most States, workmen's compensation is financed privately, just like other forms of insurance and like tort damages. Usually the benefits are paid directly by the employer (as a self-insurer) or by the employer's insurance carriers (in which case the employer pays the premiums). See 3 A. Larson, Law of Workmen's Compensation § 92.10, p. 444 (1971); W. Va. Code Ann. § 23–2–1 *et seq.* I see no basis for singling out workmen's compensation programs for special protection or solicitude.

More pointedly, however, it defies logic to claim that § 224 could to any extent protect or encourage workmen's compensation in the manner suggested by the Court. In support of its claim that § 224 might discourage the erosion of workmen's compensation, the appellant relies heavily on a statement made by a representative of the Council of State Chambers of Commerce to the Senate Committee on Finance:

> "A matter of equal concern is the impact of Federal disability payments on State workmen's compensation programs. Legislative proposals have been offered in several States (Colorado, Florida, Maryland, and Minnesota) to reduce workmen's compensation benefits by the amount of [social security] disability benefits payable to a disabled worker. If other States follow this direction . . . we believe it

> will be only a matter of time until State workmen's compensation programs are destroyed." Hearings on H. R. 6675 before the Senate Committee on Finance, 89th Cong., 1st Sess., pt. 1, p. 259.

In addition, the Government refers to the testimony of another Chamber of Commerce representative:

> "Encroachment by social security is hampering efforts to improve the State workmen's compensation systems where improvements are needed. Faced with sharply rising costs and the duplication of benefits, employers in several States have supported legislative proposals to reduce workmen's compensation benefits by the amount of social security disability benefits." *Id.*, at 252.

I am unable to see how § 224 is connected to this asserted rationale. The federal offset provision provides for the reduction of *federal* benefits if the total of those benefits and the workmen's compensation benefits exceeds 80% of "average current earnings." However, federal benefits may not be reduced if the workmen's compensation plan provides for a reduction of *its* benefits in the event of an overlap. § 224 (d). Thus, if a State or employers in the State want to save money, the federal statute invites them to reduce workmen's compensation benefits by means of an offset provision of their own. I do not see how it is possible to argue that the federal statute is designed to prevent States from adopting their own offset provisions. If anything, the States are encouraged to cut back on their programs.[7]

[7] Indeed, where they are free to do so, see 3 A. Larson, Law of Workmen's Compensation 522, Appendix A, Table 7 (1971); W. Va. Code Ann. §§ 23-2-1, 23-2-8, individual workers are encouraged to opt out of workmen's compensation and purchase private disability insurance.

Even if it were possible to believe that the challenged federal offset provision might in some way forestall States and employers from creating offset provisions in their workmen's compensation programs, I do not see how state offset provisions could to any degree "lead to the gradual weakening or atrophy of [those] programs." *Ante,* at 84.[8] How do offset provisions hurt a program? It is as preposterous to suggest that state offset provisions could lead to the destruction of workmen's compensation as it would be to argue that the current federal offset provision might destroy the federal social security program. Such manufactured and totally illusory concerns cannot be deemed rational.

The plain fact is that Congress passed this offset provision because it thought disabled persons should not receive excessive combined disability payments. Perhaps by oversight,[9] it arbitrarily singled out workmen's compensation benefits from the universe of disability compensations, and required that workmen's compensation *alone* was to be offset against federal social security. If the majority's "rational basis" test in fact is to have any meaning, Congress cannot be permitted to single out recipients of workmen's compensation for this adverse

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[8] It is worth noting that payments for total and permanent disability are only a small part of the total scheme of compensation of any workmen's compensation act. Benefits are also provided for medical and hospital expenses, funeral expenses, rehabilitation, specific scheduled losses, temporary disability, and other forms of loss, see, *e. g.*, W. Va. Code Ann. §§ 23–4–3, 23–4–4, 23–4–6, all of which are unaffected by social security.

[9] Secretary of HEW Celebrezze opposed the present offset provision, arguing that any change should await a more thorough study of the overlap problem. Hearings on H. R. 6675 before the Senate Committee on Finance, 89th Cong., 1st Sess., pt. 1, p. 146. The Committee chose not to wait.

treatment. The burden of reduced federal benefits—so devastating to the families of the once-working poor—cannot be imposed arbitrarily under the Fifth Amendment. In my view, that has happened here. I dissent.[10]

[10] Since, in my view, the present discriminatory offset provision cannot stand, there is no need to decide finally whether Congress has the power to pass an offset provision which would qualify an already accrued interest in social security benefits. Whatever might be said about the characterization of welfare assistance as "property," see *Goldberg* v. *Kelly*, 397 U. S. 254, 262 n. 8 (1970), surely a worker who is forced to pay a social security tax on his earnings has a clearly cognizable contract interest in the benefits which justify the tax. The chacterization of this interest as "noncontractual" in *Flemming* v. *Nestor*, 363 U. S. 603, 611 (1960), is, in my view, incorrect. The analogy to an annuity or insurance contract, rejected there, seems apt. *Id.*, at 624 (Black, J., dissenting). See also Reich, The New Property, *supra*. Of course, as the court says, Congress may "fix the levels of benefits under the Act or the conditions upon which they may be paid." But once Congress has fixed that level and those conditions, and a worker has contributed his tax in accord with the law, may Congress unilaterally modify the benefits in a way which defeats the expectations of beneficiaries and prospective beneficiaries? At the least, it would seem that after a worker has contributed the tax for 20 quarters, 42 U. S. C. § 423 (c)(1), and his interest in the benefits has fully accrued, Congress may not unilaterally qualify that interest by introducing an offset provision not previously contemplated by the parties.